

CITY OF DUNSMUIR

"Home of the Best Water on Earth"



August 21, 2009

Siskiyou County Superior Court
Attention: Jan Peery
P. O. Box 1026
Yreka, California 96097

RECEIVED

AUG 25 2009

SUPERIOR COURT

Certified Mail-Return Receipt Requested

RE: RESPONSE 2008-2009 Civil Grand Jury Report

Dear Siskiyou County Superior Court, Civil Grand Jury, County Administrator, Board of Supervisor's and County Counsel:

Grand Jury Finding, F1: The Grand Jury found the City of Dunsmuir to be in violation of section 17.04.050 of its municipal code. Specifically, the Grand Jury contends that vacation rentals are not appropriate for R-1 zones, which are designated for single-family use.

Response: The R-1 district allows for single-family dwellings and structures that have similar use. Single-family dwellings are defined as "a detached building designed for and/or occupied exclusively by one family." Municipal Code 17.04.050. The zoning code does not specifically exclude vacation rentals, or long-term rentals, from the R-1 district. In fact, there is no mention of vacation rentals anywhere in the zoning code.¹ Based on the definition of "Single-family dwellings" currently in the zoning code, vacation rentals are appropriate for an R-1 district.

Due to public concern regarding the lack of regulation of the vacation rental industry, the issue was brought the Planning Commission. The Planning Commission and the City Council are responsible for making the ultimate decision regarding the zoning ordinances and its enforcement. After public hearings on the issue, the Planning Commission decided not to regulate the vacation rentals, and the City Council upheld this decision. This is an appropriate exercise of their power.

Remediation: The Planning Commissions decision was proper and no remediation is necessary. The City may review its zoning laws to create specific zoning ordinances for vacation rentals, if it wishes.

Grand Jury Finding, F2: The City's legal analysis ignored the definition that allowed its revenue from the City Transient Occupancy Tax and the business permits issued for vacation rentals in the R-1 zone. It also ignored aspects of Residential Zone definitions such as 17.04.050 definition of family, single-family, home occupancy and hotel.

Response: The Transient Occupancy Tax regulations were considered in determining that vacation rentals qualify as a single-family dwelling. Pursuant to the City of Dunsmuir Municipal Code, for the privilege of occupancy in any hotel, each transient is subject to and shall pay a tax in the amount of eight percent of the rent charged by the operator. Municipal Code section 3.24.020. A "Hotel" is defined as "any structure... designed for occupancy by a transient for dwelling, lodging or sleeping

¹ It is unclear where the Grand Jury came up with the definitions of Residential One (R-1) zoning and Vacation Rental (VR) in the glossary. These are not part of the City of Dunsmuir zoning ordinance. In addition, the Grand Jury's definition of "single family dwelling" appears to be the compilation of the City of Dunsmuir zoning ordinances definition of "single-family dwellings" and "family."

purposes.” Municipal Code section 3.24.010 (*emphasis added*). “Transient” means any person who occupies the structure for a period thirty (30) consecutive days or less. *Ibid*. Transient Occupancy Taxes have no affect on classification of the structure; they just change the rate occupants are taxed.

Similarly, it is unclear how the requirement that the owner of the vacation rental have a business license affects the zoning of the building where the business is run. It is clear that if the Planning Commission chose to, they could have imposed, and regulated, specific zoning ordinances regarding vacation rentals. They chose not to. As a result, there is no reason why they should not be viewed as single-family dwelling.

Regarding the definitions under municipal code section 17.04.050, these have been addressed above.

The Grand Jury’s findings are correct; as written, the zoning ordinance is potentially vague and overbroad. The City Attorney’s office will continue to caution the City that when there is an issue regarding the use and enjoyment of private property, the City should attempt, wherever possible and legal, not to infringe on the property owner’s rights.

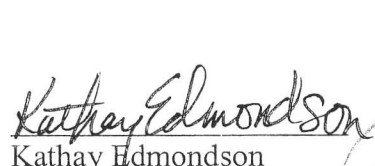
Remediation: The Planning Commissions decision was proper and no remediation is necessary. The City may review its zoning laws to create specific zoning ordinances for vacation rentals, if it wishes.

Grand Jury Finding, F3: Officials with a potential conflict of interest participated in most of the actions and all of the discussion concerning Vacation Rental businesses.

Response: The City Attorney’s office strongly advises all elected officials to avoid any appearance of impropriety. If they have a financial interest in an agenda item, they should abstain voting on it. In addition, elected official should remove himself or herself from the room while the issue is discussed.

Remediation: The Dunsmuir City Council regrets any and all conflicts of interest, commits to expunge the defective votes, commits to reconsider the matter and commits to ensure members with potential conflicts not participate.

Thank you for your recommendations. We hope these responses will qualify as a response pursuant to Section 933.05(a) of the California Penal Code. Should you at any time desire any other information, please contact our office and we will gladly respond to your needs.


Kathy Edmondson
Mayor


J. Keith Anderson
City Administrator


Robert O'Connor
Chair, Planning Commission

cc: Council (memo: comments or responses received at public meeting 7/17/09, 8/21/09)
City Attorney (ref: Response to Grand Jury Memo dated July 24, 2000)
Planning Commission (memo: comments or responses received at public meeting 8/5/09)